

It is asserted by the examiner that the inventions of Group I and Group II "have acquired a separate status in the art as shown by their different classification" and that therefore "restriction for examination purposes as indicated is proper." However, the assignment of USPTO classification is not in and of itself proof that the inventions have indeed acquired separate status in the art. Additionally, it does not relieve the Examiner of the obligation to search all other relevant classes for examination purposes. Having different patent office classifications simply means that the claims might otherwise be referred to different examining groups--it does not mean that an examiner in either examining group should not perform a search covering both art classifications. To conduct a proper examination of the claims of either Group, the art of both class 220, subclass 659 and class 29, subclass 428 must be searched to meet the thoroughness requirement of the rules. This is especially true because those classes/subclasses have now been recognized by the Examiner to include relevant art. The art class dealing with a method may contain a reference that incidentally discusses a final structure that is pertinent to the present invention, and the art class dealing with an article may contain a reference that incidentally discusses a pertinent method. The rules provide:

"On taking up an application for examination or a patent in a reexamination proceeding, the Examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the claimed invention. The examination shall be complete with respect both to compliance of the application or patent under reexamination with the applicable statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated. [37 CFR 1.104(a)].

There has been no showing that a search of these two art classes/subclasses would pose a serious burden on the Examiner, and both should be searched. Multiple art classes/subclasses are routinely searched when applications are examined, and there is no reason that all of the art classes/subclasses identified by the Examiner as relevant cannot be searched in this case. MPEP 803 states:

"If the search and examination of the entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." [Emphasis added]

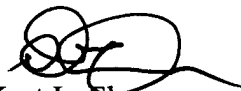
Given that 37 CFR 1.104(a) mandates a thorough examination, which would presumably include searching in both art classes, the mandate of MPEP 803 requires that both inventions be examined. If the restriction is maintained, Applicant asks that the Examiner demonstrate why a search of both classes/subclasses would pose a serious burden, and in fact why both classes/subclasses should not be searched to meet the thoroughness requirement. Applicant wants a thorough search of its invention, and is concerned that the search may be less than thorough if certain search classes are arbitrarily excluded for restriction reasons.

Applicant requests a prompt and favorable action by the Examiner. If the Examiner believes that prosecution of this Application could be expedited by a telephone conference, the Examiner is encouraged to contact the Applicant.

The Commissioner is hereby authorized to charge any additional fees and credit any overpayments to Deposit Account No. 50-1059.

Respectfully submitted,
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